

1-1-.13 Third Party Tester Program. Amended.

1. Definitions.

1. Cancellation. A Tester's or Examiner's certification is terminated by the Department because of some error defect in the certification or because the Tester or Examiner is no longer entitled to such certification. The cancellation of certification is without prejudice, and application for a new certification may be made at any time after such cancellation.
2. CDL. A commercial driver's license issued pursuant to O.C.G.A. §40-5-140, et seq. which authorizes an individual to operate a class of commercial motor vehicles.
3. Department. The Georgia Department of Driver Services.
4. Examiner. Any natural person, not an employee of the Department of Driver Services, who is certified by the Department of Driver Services as a Third Party Examiner to administer Commercial Driver's License testing through a Third Party Tester.
5. Monitor. Department of Driver Services employee responsible for conducting random examinations, inspections and audits of Third Party Testers and Examiners for compliance with federal and state laws and regulations.
6. Revocation. A Tester's or Examiner's certification is terminated by formal action of the Department, which privilege shall not be subject to renewal or restoration, except that an application for a new license may be presented to and acted upon by the Department after the expiration of the applicable period of time prescribed by the Department. A revocation shall be for a period of at least one (1) year or indefinitely.
7. Suspension. A Tester's or Examiner's certification is temporarily withdrawn by formal action of the Department, which temporary withdrawal shall be for a period specifically designated by the Department.
8. Tester. Any employer or school engaged in conducting commercial driver's license testing through Third Party Examiners.

2. Minimum Requirements for Examiners.

1. Must be trained and certified to conduct skills testing for CDL's by the Department or its authorized representatives.
2. Must comply with the following:
 1. Must have a high school diploma or its equivalent.
 2. Must be a regular employee of the employer and recommended by the employer or must be a contracting Trainer/Examiner.
 3. Shall not be a convicted felon.
 4. Shall not have been convicted of any serious moving violation as defined in O.C.G.A. §40-5-142 within three (3) years prior to application.
 5. Shall not have been enrolled or participated in a state approved Risk Reduction Program.
 6. Must be qualified as a Commercial Motor Vehicle Operator and must either possess or be eligible for a CDL of the classification for which the Examiner will be conducting tests.
 7. Must successfully complete the Department's prescribed course in CDL classroom instruction and behind the wheel examination. (i) Must pass all

CDL Knowledge and Endorsement Tests on the first day of the training session. (ii) Upon completion of specialized training in classes A, B, and C, the Examiner will be issued a certification card qualifying them to examine applicants for skills in license classes equal to their training certification.

8. Must possess a valid certification identification card which shall be evidence of the Examiner's certification status.
9. An Examiner whose certification has expired or has been surrendered shall not administer any part of the CDL examination until completion of one of the following:
 1. An Examiner with expired certification or who has surrendered his or her certification may apply for reactivation of their certification within two (2) years after the expiration or surrender date of the previously issued certification by performing a CDL examination to the satisfaction of the Department.
 2. If more than two (2) years has lapsed since expiration or surrender, the Examiner must successfully complete the Department's prescribed course in CDL classroom instruction and behind the wheel examination to become recertified.
10. Must conduct at least ten CDL tests per calendar year. Failure to do so will result in suspension from conducting further CDL tests.

3. Minimum Requirements for Testers.

1. Must have an established business.
2. (a) Must have a fleet of not less than 25 commercial motor vehicles registered in Georgia; (b) must have a fleet of not less than 25 registered commercial motor vehicles provided that the Examiners and applicants are employees of the Tester; or (c) be a Technical/Vocational School, or a Public School System.
3. Must maintain adequate driver records reflecting the driver history of each Examiner.
4. Must enter into a Commercial Driver's License Third Party Tester Agreement with the Department.
5. Agree to have the Third Party Tester Program monitored by the Department and the Federal Motor Carrier Safety Administration.
 1. The skills test plan used must be the one provided by the Department. An authorized member of the Department must approve any changes to the skills test prior to the changes being implemented.
 2. All Examiners must submit to the Monitor and the CDL Program Manager a testing schedule for all testing to be conducted. This schedule will be submitted two (2) weeks in advance of the scheduled test. A 24-hour notice will be given for cancellation. The Monitor may approve changes in schedules as necessary. Testing at times and dates not submitted on the schedule or Monitor approved changes will violate the agreement between the Tester and the Department.
6. Must ensure that all examiners employed by the Tester are certified by the Department and that the Examiners comply with the Department Rules and Regulations, all applicable state and federal laws, and Department instructions.

4. Test Administration

1. Skill tests will be conducted strictly in accordance with policy used by the Department CDL Examiners. Such instruction may include information on skills test content, route selection/revision, test forms, Examiner procedures, and administration procedures and/or changes.
2. Skills tests shall be conducted:
 1. Only on test routes approved by the Department.
 2. In a vehicle representative of the class and type of vehicle for which the CDL applicant seeks to be certified and for which the Examiner is qualified to test.
 3. Using the Department approved content, forms, and scoring procedures.
 4. Only on approved days of the week during daylight hours only.
3. Only licensed Georgia drivers or drivers with approval from the Department may be tested.
4. Examiners must complete each CDL test before beginning another test and may not start a test within two (2) hours of starting the previous test.
5. Examiners shall not administer any part of a CDL test unless they have a valid certification card/certificate.

5. Record Files to be maintained by Tester:

1. Third Party Examiner file:
 1. A copy of each Examiner's current certification identification card with photograph.
 2. A copy of Examiner's MVR (current update, a minimum of once per year).
 3. Examiner and Tester Certifications must be displayed.
 4. Tester must maintain these records for the previous two (2) years and for the current year.
 5. Tester must maintain these records on an Examiner for at least two (2) years after that Examiner leaves the Tester's employment.
2. CDL applicants tested by each examiner:
 1. A copy of DS 1235 (score sheet) on each applicant tested (passing or failing copies).
 2. A copy of instructional permit or commercial driver's license
 3. A signed copy of the CDL Skills Testing Information Agreement Form.

6. Notification Requirements.

1. Testers must:
 1. Notify the Department in writing 30 days prior to any change in the Tester's name and/or address.
 2. Notify the Department in writing within two days of any change in:
 1. The Examiners who are employed by the Tester; and
 2. Any Examiner's driving status.
 3. Notify the Department in writing within ten days of any of the following occurrences:
 1. The Tester ceases to do business in Georgia.
 2. The Tester fails to comply with any of the Department's requirements.

3. Examiner receives notice from the Department of any driver's license suspension, revocation, disqualification, cancellation or DUI conviction.
 4. Any Examiner fails to comply with any of the Department's requirements.
 4. Request and obtain approval from the Department of any proposed changes in the skills test(s) route(s), test content, or Examiner administrative procedures.
2. The Examiner shall notify the Department within ten days of leaving the employ of a Tester.
3. Reports to the Department:
 1. A copy of skills test roster of applicants tested.
 2. A copy of test schedules.
7. Denial/Suspension/Revocation/Cancellation of Third Party Testing Program Certification.
 1. The Department may deny any application for a Tester's or Examiner's certification or cancel certification if the applicant does not qualify for certification under these rules. Misstatements or misrepresentations in the application may be grounds for cancellation.
 2. Any Tester or Examiner may relinquish a certification upon thirty days written notice to the Department. All forms, manuals, or supplies that the Department has furnished, including certification and certification identification cards of Examiners shall be surrendered.
 3. The Department may cancel the Third Party Testing Program provided for in these requirements in its entirety or may cancel it in part.
 4. The Department may suspend or revoke a Tester's or Examiner's certification upon any of the following grounds:
 1. Failure to comply with or satisfy any of the provisions of these requirements, the Department's instructions or the Third Party Tester agreement.
 2. Falsification of any records or information relating to the Third Party Testing Program.
 3. Commission of any act which compromises the integrity of the Third Party Program.
 4. Failure to fully cooperate with the Monitor, including providing the Monitor access to:
 1. all Third Party Tester Program documents and records;
 2. any facility where testing is performed; or
 3. For the Examiner, driver's license suspension, revocation, recall, or disqualifications.
 5. If the Department determines that grounds for cancellation of certification exists for failure to comply with or satisfy any of these requirements or the Third Party Tester Agreement, the Department may postpone action and allow the Tester or Examiner thirty days to correct the deficiency.
 6. Suspension/Revocation and Appeal Procedures.

1. Upon determining that a Tester's or Examiner's certification should be suspended, revoked, or cancelled the Department shall notify the Tester or Examiner by certified mail, return receipt requested. Such notice shall be deemed received three (3) days after mailing.
 2. The notification shall notify the Tester or Examiner of the following requirements:
 1. That the Tester or Examiner may, within 15 days of receipt of the notice, request a hearing. The request must be in writing and received by the Department within the 15 day period specified.
 2. That if the Department does not receive a written hearing request within the 15 day period:
 1. Any rights to an appeal and hearing shall be considered to have been waived; and
 2. The suspension, revocation, or cancellation will be effective upon the expiration of the 15 day period.
 3. Upon receipt of a timely, written hearing request, the Department shall schedule a hearing before a designated hearing officer of the Department.
 4. The hearing and appeal procedures shall be as specified in Ga. Admin. Comp. Ch. 375-3-3-.04.
 5. A Tester or Examiner who timely requests a hearing may continue to administer CDL testing pending issuance of a final decision by the Administrative Law Judge.
7. Emergency Order.
1. If the Department determines that a Tester's or Examiner's certification should be suspended, revoked, or cancelled and that the public health, safety, or welfare imperatively requires emergency action, the Department is, upon expressly so finding, authorized to issue an emergency order suspending or revoking the Tester's or Examiner's certification.
 2. The Emergency Order shall incorporate such a finding and shall notify the Tester or Examiner of the following requirements:
 1. The Emergency Order is effective upon receipt of the Order.
 2. The Tester or Examiner may, within 15 days of receipt of the notice, request a hearing. The request must be in writing and received by the Department within the 15 day period specified.
 3. If the Department does not receive a written hearing request within the 15 day period, any rights to an appeal and hearing shall be considered to have been waived.
 3. The Order shall be served on the Tester or Examiner by personal delivery or certified mail, return receipt requested.
 4. Upon receipt of a timely, written hearing request:
 1. The Department shall schedule a hearing before a designated Department hearing officer.
 2. The hearing shall be scheduled within 30 working days of receipt of the hearing request, unless the Tester or Examiner requests or consents to a continuance.

3. This shall be a preliminary hearing at which the hearing officer determines whether the public health, safety, or welfare continues to imperatively require emergency action.
 1. If the emergency action is upheld, the suspension, revocation, or cancellation remains in effect and the appeal procedure shall proceed as set forth above.
 2. If the emergency action is reversed, the Tester or Examiner may be restored to administering CDL testing pending completion of the appeal proceedings.
5. A Tester or Examiner who timely requests a hearing may not continue to administer CDL testing pending issuance of a decision by the Department hearing officer.
8. Reinstatement. A Tester or Examiner may apply for certification reinstatement at the end of a suspension period.

Authority: O.C.G.A. §§40-5-156 and 40-16-5(c).

SYNOPSIS

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

The purpose of the proposed amendment is to clarify the circumstances in which an entity may qualify to conduct commercial driver's license testing through Third Party Examiners. The rule has been amended to state that an entity with at least twenty-five (25) commercial vehicles may be qualified to test applicants so long as the applicants and the Examiners testing the applicants are employees of the entity. Of course, any such entity must meet all other minimum requirements as set forth under this rule.

DIFFERENCE BETWEEN EXISTING AND PROPOSED RULE

Sub-paragraph 2 of Paragraph 3, which describes the minimum requirements for Third Party Testers, has been amended to add three different sub-sections, two of which, sub-sections (a) and (c), retain the previous language of Sub-paragraph 2. The following new language has been added as sub-section (b) to Sub-paragraph 2: “must have a fleet of not less than 25 registered commercial motor vehicles provided that the Examiners and applicants are employees of the Tester.”